IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.203 OF 2007

Balabhai Associates .. .. Appellants
(Org. Plffs.)

v/s.

Municipal Corporation of Greater Bombay. .. Respondent
(Org.Deft.)

Mr.R.A. Thorat i/by Ms.Prachi Tatake for Appellant.

Mr.J.J. Xavier for Respondent.

CORAM : ROSHAN DALVI, J.

Dated : 14th June, 2007

ORAL ORDER :

1. The Appellants, who sued for protection of their structures in the Bombay City Civil and Sessions Court, have filed this Appeal against the judgment and order dated 28/11/2006, dismissing their Suit with costs.

2. The DMC has considered each of the documents relied upon by the Appellants in reply to the notice received by them.

He has not considered the application for repair permission since that was not relied upon by the Appellants. The learned Judge has also considered in detail the worth of each of the Appellants' documents. In these circumstances, it would have to be seen whether the learned Judge has correctly considered the Appellants' case on merits.

3. The Appellants were issued a notice of the Respondents dated 18.4.2002 for construction of a structure with B.M. Walls. A.C. Sheet roof, providing 9 rolling shutters in the front and providing ladi coba ladi slab below A.C. sheet roof as shown in the sketch. The measurements of the structure are shown in the sketch. The notice was replied on 29.4.2002. The Appellants, inter alia, relied upon assessment bills and census certificates. Both these documents are shown in the plural. Hence, the reliance is shown on more than one assessment bill and more than one census certificate. The DMC of the MMC passed an order on 28.8.2003, considering the Plaintiffs' documents. That order as well as the notice came to be impugned in the Suit filed

by the Appellants.

4. It is the Appellants' case that they purchased the suit property under a conveyance executed in 1993. The schedule to the conveyance shows a “built-up structure admeasuring 10,500 sq. feet, 40 years old with brick walls and cement sheets” being conveyed to the Appellants. The description as well as the dimensions of each of the structures are a part of the additions made in ink in the conveyance deed which is otherwise a typewritten document.

5. One assessment bill for a shed assessed under R-1954(2) has been relied upon by the Appellants. It shows assessment from 1.4.1966 for the shed in the name of one Mohammed Yakub. There is no other assessment bill for any other structure relied upon by the Appellants in reply to the notice, though the notice shows that the assessment bills are produced. There is no other assessment bill produced in the trial Court or in this Appeal.

6. The Appellants have produced two letters dated 15.5.2000 and 25.9.2001 in respect of three censussed

structures which are censussed under Nos.RXX 92-1/1, RXX 93-1/1 and RXX 94-1/1. These letters are issued by the Collector to the relevant Ward Officer of the Respondent. He made a reference to the aforesaid three censussed structures in a church compound showing the particulars of the censussed structures. These particulars are shown to be temporary construction with patra walls and patra roof. They are described as huts. The letter dated 25.9.2001 shows a permanent construction of two separate structures admeasuring 1604.53 sq. feet and 1149.13 sq. feet seen, on inspection by their office and for which action is requested by the relevant Ward Office of the Respondent. It is these letters which are stated to be census certificates. The entire reliance in the trial Court as well as in the Appellate Court upon these letters is misplaced and meant to mislead. These are the letters by the Government office to the local body giving particulars of the earlier censussed structures in whose place a permanent construction has been put up. They are not census certificates. They are not addressed to

the Appellants. The dimensions of the earlier censussed structures are not shown. Only the particulars of the construction complained of are shown. These are sought to be produced as census certificates and based upon the letter dated 25.9.2001, it is sought to be argued that the censussed structure was of an area of 2753.66 sq. meters !

7. There is a permission for restoration of two structures damaged during the riots in 1993. The restoration permission is given pursuant to an application made on 2.5.2000, 7 years after the riots. The restoration permission is not given to the occupier and holder of the census certificate. It is given to the Appellants. The Appellants claim to have purchased the structure under the Sale-deed executed on 26.4.1993, a month after the riots. If the Appellants have purchased a structure admeasuring 10,500 sq. feet on 26th April 1993, which was a built-up structure, 40 years old, with brick walls and cement sheets, it is rather esoteric how the Appellants applied for restoration of 2 structures after more than 7 years, if they were damaged

just before they were purchased.

8. The sale-deed of the Appellants does not show more than one structure censussed under 2 separate numbers. It shows one consolidated structure of 10,500 sq. feet, the particulars of which in the schedule to the sale-deed are by way of additions made in ink. In view of such a transaction, the restoration permission granted by the Respondent has to be considered. The dimensions of two censussed structures which are censussed under Nos.RXX 92 1/1 and RXX 93 1/1 are given. The first structure admeasures 512 sq. feet and second admeasures 180 sq. feet. Hence, altogether a permission for restoration of two structures is only for an area of 692 sq. feet. The height of these structures is not to be more than 10 feet and the structure is not to be constructed of RCC roof or wall. The structures shown in the notice are of RCC walls and roofs and the particulars of the structures mentioned in the schedule of the property by way of insertion / addition in ink also show

brick walls with cement sheets.

9. Hence, the reliance upon the restoration permission merely for showing dimensions of the structures under the notice is misplaced.

10. The Appellants have not relied upon any application for repair permission in the reply to the notice dated 29th April 2002. Hence, the DMC of the MMC could not consider such a document and has not considered it. It is the Appellants' case that the DMC has only considered the permission granted for two structures but not for the third structure. For what the Appellants call a third structure is shown to be the structure for which the application for repairs is made. That is made in a prescribed form submitted to the MMC on 29.6.2001 by the Appellants. It refers to census No.RXX 94 1/1. No census certificate of this number has been produced by the Appellants. The repair application is for the structure admeasuring 50 ft. x 42 ft., totalling 2100 sq. feet. There is absolutely no documentary evidence to show that such a

structure existed, which had to be repaired as per the application made on 29.1.2001.

11. The Appellants have relied upon a report made by the Court Commissioner in an interim notice taken out in R.A.E. Suit No.1149/4126 of 1982 which is also not relied upon in reply to the notice issued to the Appellants under Section 351 of the MMC Act. The Court Commissioner has found three structures on the plot of land which was the suit plot in that Suit. The report is dated 21.12.1982, which is relied upon to show that the report is for three censussed structures under the aforesaid three numbers, for two of which a census certificate is produced and for one of which an application for repair is produced. The very reliance is mischievous. The report does not give dimensions of any three structures. The three structures could have been in existence in 1982, though the said three structures are not shown to have continued to be in existence at the time of the notice or the suit or even in 1994 at the time of the conveyance in favour of the Appellants. As aforesaid, the

two letters dated 15.5.2000 and 25.9.2001 make a complaint for taking action for a structure far larger than any censussed structure and of construction material which was permanent. The application for repair permission shows the same census number on an application made three months prior to the letter issued by the Collector to the Respondent about the permanent construction. The argument that it is for a third structure is completely misconceived. It shows the same census number as shown in the Collector's letter. It is not in respect of the third structure.

12. Even if these things were true, the application for repair permission is for structure admeasuring 2100 sq. feet. The permanent construction complained of by the Collector is for two structures together admeasuring 2753.66 sq. feet. The notice is in respect of a structure having 9 rolling shutters, admeasuring 3382 sq. feet If the repair permission and the Collector's letter, which is stated to be the census certificate, are together seen, they would admeasure 4853 sq. feet. The

sale-deed of the Appellants shows sale of one structure, admeasuring 10,500 sq. feet !

13. It may be mentioned that the structures, which are censussed, are unauthorised construction on Government land prior to a given datum line. Judicial notice is required to be taken of the fact that such structures, which are censussed, are not large structures, admeasuring thousands of square feet. Hence, the last portion of the letter dated 25.9.2001, which is relied upon by the Appellants as a part of the census certificate, cannot show a census certificate issued for such a large structure.

14. Since the Appellants' case is for an immovable property, the documents relied upon by them are essentially to be considered. Their oral evidence would stand excluded by such documentary evidence, if it is to the contrary. The learned Judge has correctly considered each of these documents in Para-15 of the judgment. He has rightly

concluded that the Plaintiffs have put up a new construction under the guise of repair and restoration. Consequently, he has correctly concluded that the Plaintiffs before him failed to prove that the notice given for structure in existence which had 9 rolling shutters, was not proved to be authorised by a single document relied upon by the Plaintiffs. There is absolutely no infirmity in the said order. Appeal is disposed of after hearing both the parties at the stage of admission itself under the provisions of Order 41 Rule 11(1) of the Code of Civil Procedure.

15. The Appellants' case is seen to be dishonest. Appeal is dismissed with costs fixed at Rs.3000/- condition precedent. Interim relief granted in this Appeal is continued for a period of six weeks.

(ROSHAN DALVI, J.)